

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:F:MAN:2:POSTF-117215-02  
VATaverna

date: 4/5/2002

to: Robert Skiba  
Territory Manager, Financial Services  
ATTN: Felicisima Caballes  
Revenue Agent

from: Area Counsel, LMSB  
(Financial Services)

subject:

Form 872 - Tax Years [REDACTED] and [REDACTED]

Consent to Extend the Statute of Limitations on Assessment  
Statute of Limitations Expires: [REDACTED]  
UIL Nos. 6501.08-00, 6501.08-09, 6501.08-17

This memorandum responds to your request of March 26, 2002. This memorandum should not be cited as precedent. You have requested that we review an executed Form 872 to extend the statute of limitations on assessment of tax of [REDACTED], [REDACTED] for the taxable years [REDACTED] and [REDACTED]. The advice rendered in this memorandum is conditioned on the accuracy of the facts presented to us. This advice is subject to National Office review. We will contact you within two weeks of the date of this memorandum to discuss the National Office's comments, if any, about this advice.

Issues

Whether the executed Form 872 for [REDACTED] for the [REDACTED] and [REDACTED] taxable years is valid.

Conclusion

The Form 872 for [REDACTED] for the [REDACTED] and [REDACTED] taxable years is valid.

Facts

For the [REDACTED] and [REDACTED] taxable years [REDACTED] (EIN [REDACTED]) ("[REDACTED]"), a Delaware corporation, was the common parent of an affiliated group of

corporations and filed consolidated U.S. Corporate Income Tax Returns (Forms 1120) with its affiliates. You are presently conducting an examination of [REDACTED] for the [REDACTED] and [REDACTED] taxable years.

On [REDACTED], [REDACTED] filed a Certificate of Amendment of the Restated Certificate of Incorporation with the Office of the Secretary of State for the State of Delaware, changing the name of [REDACTED] to [REDACTED] ("[REDACTED]"). The EIN of [REDACTED] did not change.

On [REDACTED], [REDACTED] executed a Form 872 extending the statute of limitations for the [REDACTED] and [REDACTED] taxable year from [REDACTED] to [REDACTED]. The caption of the Form 872 read as follows:

"[REDACTED]  
(formerly known as [REDACTED]  
[REDACTED])."

The Form 872 was signed by the Vice President, Director of Tax, of [REDACTED].<sup>1</sup>

#### Discussion

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). Section 6501(c)(4), however, provides an exception to the general three year statute of limitations on assessment. This exception provides that the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations. The Service uses the Form 872 to memorialize such consent.

In the case of a consolidated group, guidance as to the appropriate entity to enter into a consent to extend the statute of limitations on assessment for income tax can be found in the consolidated return regulations. Treas. Regs. §1.1502-1 et seq. Pursuant to the consolidated return regulations, the common parent is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the income tax liability for the consolidated return year. Treas. Reg. §1.1502-77(a). The common parent in its name will give waivers, and any waiver so given, shall be considered as having been given or

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<sup>1</sup>This analysis assumes that to the extent any Forms 872 were executed prior to the execution of the Form 872 at issue, they are valid.

executed by each subsidiary. Treas. Reg. §1.1502-77(a). Unless there is an agreement to the contrary, an agreement entered into by the common parent extending the time within which an assessment of tax may be made for the consolidated return year shall be applicable to each corporation which was a member of the group during any part of such taxable year. Treas. Reg. §1.1502-77(c).

The common parent remains the agent for the members of the group for any year during which it was the common parent, whether or not consolidated returns are filed in subsequent years and whether or not one or more subsidiaries have become or have ceased to be members of the group. See Treas. Reg. §1.1502-77(a); Southern Pacific v. Commissioner, 84 T.C. 395, 401 (1985). Accordingly, as a general rule, the common parent remains the proper party to extend the statute of limitations for income tax for any taxable year for which it was the common parent, as long as it remains in existence.

The Form 872 should be executed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act on behalf of [REDACTED] (now [REDACTED]). See Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

In the instant case, [REDACTED] is still the common parent. It merely underwent a name change. Accordingly, it is still the proper entity to execute a Form 872. Since the Form 872 was executed by the Vice President, Director of Tax, it is valid.

#### Procedural Considerations

Please note that Section 3461 of the I.R.S. Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Service, each time that it requests a taxpayer to extend the limitations period, to advise the taxpayer of the right (i) to refuse to extend the statute of limitations on assessment, or, in the alternative, (ii) to limit an extension to particular issues or for specific periods of time. To satisfy this requirement, you should provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the consent. You should also document your actions in this regard in the case files.

In addition to the recommendations made herein, we further recommend that you pay strict attention to the rules set forth in the IRM. Specifically, the IRM requires use of Letter 907(DO) to solicit a Form 872, Letter 928(DO) as a follow-up letter to Letter 907(DO) (when appropriate), and Letter 929(DO) to transmit a copy of the executed consent to the taxpayer. See IRM Handbook No. 25.6.22 and No. 25.6.22.3. Dated copies of both letters should be

retained in the case file(s) as directed. When the signed Form 872 is received from the taxpayer, the authorized manager should promptly sign and date it in accordance with Treasury Regulation § 301.6501(c)-1(d) and IRM, Handbook No. 25.6.22.5.10. The manager must also update the respective statute of limitations in the continuous case management statute control files and properly annotate Form 895 or equivalent. See IRM, Handbook No. 25.6.22.5.11(1)(g). In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Should you have any questions regarding this matter, please contact Viviana Taverna of this office at (212) 436-1508.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

ROLAND BARRAL  
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(Financial Services)

By: \_\_\_\_\_  
VIVIANA TAVERNA  
Attorney (LMSB)